

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 08F-BD101-SBD

3 **GUILD MORTGAGE COMPANY AND**
4 **MARY ANN McGARRY, PRESIDENT**
5 7227 N. 16th Street, Suite 206
6 Phoenix, AZ 85020

CONSENT ORDER

Respondents.

7 On April 1, 2008, the Arizona Department of Financial Institutions (“Department”) issued an
8 Order to Cease and Desist; Notice of Opportunity for Hearing; and Consent to Entry of Order,
9 ordering Respondents to cease violating Arizona law. Wishing to resolve this matter in lieu of an
10 administrative hearing and without admitting liability, Respondents do not contest the following
11 Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

12 **FINDINGS OF FACT**

13 1. Respondent Guild Mortgage Company (“Guild”) is a California corporation authorized to
14 transact business in Arizona as a mortgage banker, license number BK 0018883, within the meaning
15 of A.R.S. §§ 6-941, *et seq.* The nature of Guild’s business is that of making, negotiating, or offering
16 to make or negotiate a mortgage banking loan or a mortgage loan secured by Arizona real property
17 within the meaning of A.R.S. § 6-941(5).

18 2. Respondent Mary Ann McGarry (“Ms. McGarry”) is the President of Guild, and is
19 authorized to transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-
20 941(5), as outlined within A.R.S. § 6-943(F).

21 3. Guild and Ms. McGarry are not exempt from licensure as mortgage bankers within the
22 meaning of A.R.S. §§ 6-942 and 6-941(5).

23 4. A January 7, 2008 examination of Guild, conducted by the Department, revealed that
24 Guild and Ms. McGarry:

- 25 a. Failed to prominently display the branch license for 9160 Gramercy Drive, San
26 Diego, CA 92123, but rather kept the license in a book at the receptionist’s desk;

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- b. Engaged in unlicensed activity by making, negotiating, or offering to make or negotiate at least two (2) mortgage loans at a branch office before first obtaining a branch office license for one of two office suites the branch was operating out of from the Superintendent; and designate a person from each branch office to oversee the operations of that office;
- c. Failed to conduct the minimum elements of reasonable employee investigations before hiring employees, specifically:
 - i. Failed to collect and review all of the documents authorized by the Immigration and Control Act of 1986 before hiring at least two (2) employees;
 - ii. Failed to date a completed "I9" (Employment Eligibility Verification Form) before hiring at least two (2) employees;
 - iii. Failed to have the employee sign and date the I9 and the I9 was not completed by the employer before hiring at least one (1) employee;
 - iv. I9 completed after hire date on at least two (2) employees;
 - v. Failed to consult with the applicant's most recent or next most recent employer before hiring at least nine (9) employees;
 - vi. Failed to inquire regarding an applicant's qualifications and competence for the position before hiring at least nine (9) employees;
 - vii. Failed to obtain a credit report before hiring at least seven (7) employees;
 - viii. Failed to obtain a credit report in a timely manner before hiring at least two (2) employees; and
 - ix. Failed to obtain a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction before hiring nine (9) employees;
- d. Contracted with or paid compensation to unlicensed, independent contractors for lead generation services;

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- e. Failed to maintain originals or copies of loan transactions, specifically:
 - i. Respondents failed to maintain documents, missing a HUD-1 settlement statement in at least one (1) mortgage loan transaction;
- f. Allowed borrowers to sign regulated documents containing blank spaces;
- g. Failed to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts, specifically:
 - i. Provided prior to application date a good faith estimate (“GFE”), truth-in-lending statement (“TIL”), and mortgage service transfer (“ST”) to three (3) borrowers;
 - ii. Mortgage servicing transfers were not issued to one (1) borrower; and
 - iii. Failed to date the initial application, therefore, Respondents cannot document that the GFE, TIL and ST were provided within 3 business days as required to ten (10) borrowers;
- h. Failed to maintain their trust subsidiary ledger and failed to maintain the proper fields in their subsidiary journal;
- i. Respondents commingled funds, specifically:
 - i. Respondents are using the trust account and the trust subsidiary ledger to track appraisal and credit report expenses and not for the purpose of accounting for collected upfront, refundable borrower’s funds; and
 - ii. Respondents have paid all of their appraisal and credit report expenses from this account, except loans in Oregon and Montana, thereby commingling monies held for the benefit of the borrower with monies of Respondents; and
- j. Failed to use proper appraisal disclosures, specifically:

- 1 h. A.A.C. R20-4-1806(B)(5) and A.A.C. R20-4-186(C), by failing to maintain their trust
2 subsidiary ledger and failing to provide a current reconciliation of trust bank accounts
3 to the trust subsidiary ledgers;
- 4 i. A.R.S. §§ 6-946(C) and 6-947(C), by commingling trust funds; and
- 5 j. A.R.S. § 6-946(C), by failing to comply with Arizona law by using an invalid
6 appraisal disclosure.

7 3. The violations of applicable laws, set forth above, constitute grounds for: (1) the
8 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
9 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
10 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
11 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
12 132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 6-945; and (4) an
13 order or any other remedy necessary or proper for the enforcement of statutes and rules regulating
14 mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-131.

15 **ORDER**

16 1. Respondents shall immediately stop the violations set forth in the Findings of Fact and
17 Conclusions of Law.

18 2. Respondents shall immediately pay to the Department a civil money penalty in the
19 amount of **seven thousand, five hundred dollars (\$7,500.00)**. Guild and Ms. McGarry are jointly
20 and severally liable for payment of the civil money penalty.

21 3. The provisions of this Order shall be binding upon Respondents, and resolves the Notice
22 of Hearing, subject to compliance with the requirements of this Order. Should Respondents fail to
23 comply with this Order, the Superintendent may institute further disciplinary proceedings.

24 4. The provisions of this Order shall be binding upon Respondents, their employees, agents,
25 and other persons participating in the conduct of the affairs of Guild Mortgage Company.

26 . . .

1 ORIGINAL of the foregoing filed this 6th
2 day of May, 2008, in the office of:

3 Felecia A. Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: Susan Longo
7 2910 N. 44th Street, Suite 310
8 Phoenix, AZ 85018

9 COPY mailed/delivered same date to:

10 Craig A. Raby
11 Assistant Attorney General
12 Office of the Attorney General
13 1275 West Washington
14 Phoenix, AZ 85007

15 Robert D. Charlton, Assistant Superintendent
16 Chris Dunshee, Examiner-in-Charge
17 Arizona Department of Financial Institutions
18 2910 N. 44th Street, Suite 310
19 Phoenix, AZ 85018

20 AND COPY MAILED SAME DATE by
21 Certified Mail, Return Receipt Requested, to:

22 Mary Ann McGarry, President
23 Guild Mortgage Company
24 7227 N. 16th Street, Ste. 206
25 Phoenix, AZ 85020
26 Respondents

Mary Ann McGarry, President
Guild Mortgage Company
9160 Gramercy Drive
San Diego, CA 92123

20 Susan Longo
21 191914; PHX-AGN-2008-0110



ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini
Superintendent of Financial Institutions

Janet Napolitano
Governor

CERTIFIED MAIL

May 6, 2008

Mary Ann McGarry, President
Guild Mortgage Company
7227 N. 16th Street, Ste. 206
Phoenix, AZ 85020
Respondents

Reference: Docket # 08F-BD101-SBD / Guild Mortgage Company

Dear Ms. McGarry:

Enclosed is the executed **Consent Order** for Guild Mortgage Company. This order is final and effective upon service. We have received a civil money penalty payment of \$7,500.

Please contact Craig Raby, Assistant Attorney General (602) 542-8889, with any questions.

Very truly yours,

Robert D. Charlton
Assistant Superintendent

RDC:sl1

Enclosure

cc: Craig A. Raby, Assistant Attorney General